

EXHIBIT 42

MEMORANDUM

August 21, 1995

To: Anne Buttimer
cc - Jeremy Gunn

From: Joe Freeman

Subject: "Original" Nix film

There seems to be a great deal of confusion about the disposition of the "out of camera" original Nix film (hereafter referred to as "the original"). I am unable, unfortunately, to completely dispel this confusion. But I will at least attempt to explicate it in as comprehensible a fashion as possible. Here goes.

Our correspondent, Mr. Kistemaker, believes that UPI held the original Nix film, but that it is now missing. Robert Groden apparently agrees: "His [Orville Nix's] original footage disappeared in 1978 after it was returned to the UPI by the House Assassinations Committee" (*The Killing of a President*, Robert Groden; Viking Studio Books; New York, NY, 1993, p. 32).

Certainly, at the beginning of the negotiations between the HSCA and UPI over obtaining UPI's Nix film, UPI's attorney (Donald A. Burns of Baker, Hostetler & Patterson, Cleveland, OH) frequently referred to it as "the original" (see attached copy of 003320, dated 11/14/77). Burns was dealing with HSCA attorney Michael Goldsmith. In OCR's of 10/4/77, 11/30/77 and 12/13/77, Goldsmith refers only to the "Nix film in UPI's possession" (002511, 003905 and 004058). The 1/26/78 HSCA subpoena (issued but never served) for the film refers to "movie films in your possession or control which pertain to the assassination of President John F. Kennedy in Dallas, Texas, on November 22, 1963 which were taken by Mary Muchmore and Orville Nix in Dallas on November 22, 1963" (HSCA Record Number 180-10117-10335). I read this as ambiguous on the issue of "originality". The word "original" is not to be found in Donald Burns' next letter to Michael Goldsmith (004775, 1/20/78), except in a most ambiguous context (see letter's last page).

From this HSCA correspondence history, we must now jump both backward and forward in time.

An FBI memo of 5/19/67 from Mr. Rosen to Mr. DeLoach references that a Nix film was turned over to the FBI on 12/1/63 (62-109060-5301). This film was in turn furnished by the FBI to the Warren Commission. The reference in this memo would seem to be to the original film, but it is not

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definitive. In a 3/31/92 interview with Village Voice, Nix's granddaughter -- Gayle Nix Jackson -- seems to corroborate this chain of possession: "The FBI had issued a dictum to all of Dallas' film labs that any assassination photos had to be turned over to the FBI. The lab called my granddad first and, like the good American he was, he rushed it to the FBI"(quoted in *Who's Who in the JFK Assassination*, Michael Benson; Citadel Press, New York, NY, 1993; p. 314). An earlier letter (8/12/64) to the FBI by UPI's attorney, John Novatney (also of Baker, Hostetler & Patterson), references a meeting of the previous day "regarding the two United Press International motion picture films covering the assassination of President Kennedy." The letter continues: "I understand that Mr. Nix was recently given a single print of the so-called 'Nix' film, which Mr. Nix sold to UPI and is now owned and copyrighted by UPI...". This meeting was about protecting UPI's copyright of the film and references 6 different prints of the Nix film, "including the [print] given to the FBI by UPI"(62-109090-Unrecorded). This letter can be read several ways on the issue of who had the original film, and is therefore not definitive, but it at least suggests that the UPI's film was a copy, not the original. The Warren Commission's Nix film -- original or copy -- became the property of the United States Government in 1967 as a function of PL 89-318. On August 11, 1967, Archivist Robert Bahmer wrote John Novatney of Baker, Hostetler & Patterson on the issue of ownership. This letter references earlier correspondence which we don't have, but it explicitly refers to the film in the possession of the National Archives *as a copy* (see NARA Record Number 189-10001-10027, also referenced below).

Now, fast forward to 1991. The copyright which UPI had purchased from Orville Nix has expired, and Gayle Nix Jackson is seeking confirmation from UPI that the copyright has reverted to the family, *and is also trying to secure the original film*. On 4/15/91, she writes a letter to the National Archives requesting the *return* of the original, which she says was secured by the U.S. Government from UPI in 1963 (which suggests, contrary to her statement to Village Voice, that UPI had possession of the original at *some point*).

There were at least two internal NARA memoranda generated by Gayle Nix Jackson's April request letter. These are part of NARA Record Number 189-10001-10027 and are attached. These reference the film in NARA's possession as the original. And yet, when NARA responds to Ms. Jackson on 5/24/91, it states: "*Whether the 8mm color film is the 'out-of-camera' original is still another question. There are no yellow flashes or camera stops typical of camera original, so it may very well be a copy.*"

UPI weighs in shortly thereafter. In a 6/4/91 letter to Jackson, UPI acknowledges the reversion of the copyright and distribution rights and states that "*UPI no longer is in possession of, nor does it retain ownership rights to, the original print of the Nix film.*" This letter goes on to say that the U.S.

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government acquired title in 1967 and that the original is stored at the National Archives. By the same token, the phrasing -- "no longer" -- again implies that UPI had at some point been in possession of the original. In a letter of the same date to Christopher Runkel of the National Archives legal staff, a UPI attorney states that "Ms. Jackson is trying to locate the original of the film, *which she believes is not in the possession of the National Archives. UPI does not have the original film and can offer no assistance in locating it.*" (Emphasis added, both letters part of NARA Record Number 189-10001-10026).

I have a call into the current head of NARA's Motion Picture, Sound and Video Branch to ascertain their latest position -- if any -- on the matter.

In conclusion -- pending further and definitive input -- it is not clear whether or not the original Nix film is lost. The problem *may* not be *finding* the original film so much as being able to *identify* it as such.

Possible Steps to Consider

In addition to whatever Kevin Walsh turns up (if he doesn't solve the mystery for us altogether), Gayle Nix Jackson may be worth talking to on the issue, though she would not, of course, be sympathetic to our goal of obtaining (if we don't have it already) the original film. HSCA staffer Michael Goldsmith could clue us in as to whether or not he thought he was asking for/getting the original when he negotiated with UPI back in 1977-78. Bob Groden might be able to shed some light, as well, or at least add to the general cacophony on this issue. We could also contact (where possible) the attorneys who have represented UPI on this issue over the years: John F. Novatney and Burt Reinhardt (WC era); Donald A. Burns (HSCA era); Frank Kane and Karen Avigliano (both 1991). Mr. Kistemaker's letter also references an Alexander P. Bock of UPI. We could even write Mr. Kistemaker back, sharing what we know/have learned, and asking him for corroboration of his thesis that the original has been lost.

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